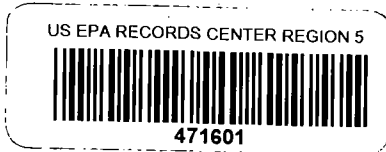


02/03/99



U.S. Department of Justice

Environment and Natural Resources Division

DJ#90-11-2-1109

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Telephone (202) 616-6552
Facsimile (202) 616-6584

February 3, 1999

VIA OVERNIGHT MAIL

TO: Attached Counsel of Record List

Re: United States v. City of Albion, Michigan et al., Civ.
No. 1:97CV1037, (W.D. Mich.)--Revised Draft Consent
Decree.

Dear Counsel:

Enclosed is a revised, draft, proposed Consent Decree in the above-referenced matter based on our telephone conference calls of January 26, 28 and 29, 1999. In this version, I've deleted previously incorporated edit features to reduce the complexity of the document. In addition, I've included with edit features, the specific revisions discussed on the telephone calls of the above dates, proposed language faxed me after the calls, as well as certain revisions based on input from mid-level managers at U.S. DOJ and U.S. EPA. I will discuss these on our next telephone conference call. In addition, I've indicated in brackets those areas of the text where counsel agreed on the above telephone calls to furnish proposed language, but which was not received by the date of this letter.

As stated previously, final terms of settlement are subject to approval of the appropriate management officials of the U.S. DOJ and U.S. EPA. If there are any questions regarding the enclosures, please do not hesitate to contact me. I look forward to further productive discussions on our scheduled conference call of Monday, February 8, 1999 at 10:00 AM eastern time. Thank you for your continued efforts and cooperation in seeking resolution of this matter through settlement.

Sincerely,

Lois J. Schiffer
Acting Assistant Attorney General
Environment and Natural Resources
Division

By: 

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)

v.)

CITY OF ALBION, MICHIGAN,)
Defendant/Third-Party)
Plaintiff, Counter-)
Defendant, Counter-)
Claimant,)

v.)

COOPER INDUSTRIES, INC. and)
CORNING, INCORPORATED,)

Third-Party Defendants,)
Counter-Claimants and)
Third-Party Plaintiffs,)

v.)

DECKER MANUFACTURING)
CORPORATION,)
Third-Party Defendant,)
Counter-Claimant)
and Cross-Claimant.)

Case No. 1:97-CV-1037

Hon. David W. McKeague

Mag. Joseph G. Scoville

CONSENT DECREE

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DRAFT - FEBRUARY 2, 1999**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter against the City of Albion, Michigan, (the "City") pursuant to Sections 106(b), 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §§ 9606(b), 9607(a) and 9613(g)(2).

B. The United States in its Complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Albion-Sheridan Township Landfill Superfund Site at 29975 Erie Road, in ~~Albion~~, Sheridan Township, Calhoun County, Michigan, (the "Site") together with accrued interest; (2) a declaratory judgment that the City is liable, jointly and severally, for all future response costs incurred by the United States in connection with the Site; and (3) civil penalties for violation of a Unilateral Administrative Order ("UAO"), Docket No. V-W-96-C-316, issued on October 11, 1995 by EPA under Section 106(a), 42 U.S.C. § 9606(a), to ~~the~~ four of the potentially responsible parties ("PRPs") in this matter, including the City, to conduct response actions at the Site.

C. The City filed a Third-Party Complaint against Cooper Industries, Inc. ("Cooper") and Corning Incorporated ("Corning"), two other PRPs identified by the EPA, but not named in the United States' principal Complaint. Additionally, in response to a Counterclaim filed against the City by Third-Party Defendant Decker Manufacturing Co. ("Decker"), the City filed a Counterclaim against Decker. The City filed its Third-Party Complaint against Cooper and Corning and Counterclaim against Decker, alleging that they are liable pursuant to CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f), Part 201 of the Michigan Natural Resources and Environmental Protection Act ("NREPA"), as amended, M.C.L. § 324.20126a, Section 20129(3) of NREPA,

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M.C.L. § 324.20129(3), common law and statutory contribution, and other applicable Federal and State law. Among other relief, the City seeks cost recovery and contribution from the Third-Party Defendants for any damages or costs of response incurred by the City in conjunction with the Site or as a result of the principal Complaint.

D. Cooper and Corning filed Counterclaims against the City alleging that the City is liable pursuant to CERCLA Section 107, 42 U.S.C. § 9607, and NREPA Section 20126, M.C.L. § 324.20126, for past and future response costs incurred and to be incurred by Cooper and Corning at the Site. Additionally, Cooper and Corning seek contribution from the City pursuant to CERCLA Section 113, 42 U.S.C. § 9613, NREPA Section 20129(3), M.C.L. § 324.20129(3), and common law contribution. Cooper and Corning also seek a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., finding the City liable to Cooper and Corning for damages and response costs that have been or will be incurred at the Site. Cooper and Corning also filed a Third-Party Complaint against Decker alleging that Decker is liable pursuant to CERCLA Section 107, 42 U.S.C. § 9607, and NREPA Section 20126, M.C.L. § 324.20126, for past and future response costs incurred and to be incurred by Cooper and Corning at the Site. Additionally, Cooper and Corning seek contribution from Decker pursuant to CERCLA Section 113, 42 U.S.C. § 9613, NREPA Section 20129(3), M.C.L. § 324.20129(3), and common law contribution. Cooper and Corning also seek a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., finding Decker liable to Cooper and Corning for damages and response costs that have been or will be incurred at the Site.

E. Decker filed a Counterclaim and Cross-claim against Cooper/Corning and the City, respectively, seeking contribution pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), Section 29(3) of NREPA, M.C.L. 324.20129(3), as well as common law, toward the response costs Decker has incurred in connection with the Site. Decker also seeks a declaratory

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judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., finding the City, Cooper and Corning L liable to Decker for damages and response costs that have been or will be incurred at the Site.

F. The City, Cooper, Corning and Decker (collectively the "Settling Defendants") filed Answers and Affirmative Defenses denying liability. Settling Defendants do not admit any liability to the Plaintiff or each other arising out of the transactions or occurrences alleged in the Complaint, Counterclaims, Cross-Claims and Third-Party Complaints and deny that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

G. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Michigan (the "State") on June 6, 1995 of negotiations with the PRPs regarding the implementation of the remedial design and remedial action ("RD/RA") for the Site, and EPA provided the State with an opportunity to participate in such negotiations.

H. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of Interior on June 6, 1995 of negotiations with the PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

I. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41000, 41021.

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J. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced on January 30, 1992, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

K. EPA completed an RI/FS Report in or about September 1994.

L. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on September 26, 1994, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

M. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on March 28, 1995, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(f).

N. EPA issued the UAO, Docket No. V-W-96-C-316, to the City, Cooper, Corning and Decker on October 11, 1995. The City, Cooper, Corning and Decker filed written comments and objections to the UAO, and challenged the validity of the UAO. Pursuant to the UAO, Cooper and Corning completed a Remedial Design for the selected remedial action ("RA") at the Site, that was approved by EPA, in or about August 1997. Cooper and Corning completed an RA Work Plan, that was approved by EPA on September 4, 1997. Decker,

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through its wholly owned subsidiary, CDC Associates, Inc. ("CDC"), has acquired certain properties adjacent to the Site in order to provide the access required to implement the RA.

O. Decker and EPA negotiated a separate Consent Decree, lodged with the Court on May 27, 1998 (the "Decker Consent Decree"). The City, Cooper and Corning have submitted timely objections to the Decker Consent Decree. This Consent Decree is intended to supersede the Decker Consent Decree. The United States agrees to move the Court to withdraw the Decker Consent Decree at the same time it lodges this Consent Decree, and such motion shall not be opposed by the City, Cooper or Corning. Upon entry of this Consent Decree by the Court, the Decker Consent Decree shall be null and void and of no legal effect.

P. Cooper and Corning (the "Settling RA Defendants"), agree to perform the RA construction at the Site, pursuant to the EPA-approved RA Work Plan and RD, attached as Appendices A and E, respectively, and incorporated herein by reference. The City and Decker (the "Settling O&M Defendants"), agree to perform the Operation and Maintenance ("O&M") of the RA at the Site, pursuant to the EPA-approved O&M Plan, attached as Appendix B, and incorporated herein by reference. Within fourteen (14) days after entry of this Consent Decree by the Court, EPA agrees to withdraw the UAO, Docket No. V-W-96-C-316, issued on October 11, 1995 to the City, Cooper, Corning and Decker. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its a Appendices.

Q. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action, including the Operation and Maintenance, selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

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R. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying c Complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each Supervising c Contractor hired by them to perform the Work (as defined below) required by this

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Consent Decree (but not each employee of such contractors) and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the RA Work undertaken pursuant to this Consent Decree, each RA contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling RA Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). With regard to the O&M Work undertaken pursuant to this Consent Decree, each O&M contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling O&M Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Adjacent Parcels" shall mean the former "Gill" and "Prater" properties located adjacent to the Site purchased by Decker, through CDC, for implementation of the RA. The Adjacent Parcels are described in Appendix C.

Does this include western property?

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"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this ~~Consent Decree~~ and all ~~Appendices~~ attached hereto (listed in Section XXXI). In the event of conflict between this Consent Decree and any ~~a~~ Appendix to this Consent Decree, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal, ~~or State or City~~ holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal, ~~or State or City~~ holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Sections VIII, (Remedy Review) commencing on the date of entry of this Decree.

"Interest," shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

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"Matters Addressed" in this Consent Decree shall mean all response actions taken or to be taken, and all response costs incurred or to be incurred by the United States or any other person with respect to the Site. The "Matters Addressed" in this Consent Decree do not include those response costs or those response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event, and to the extent that the United States asserts such rights against the Settling Defendants coming within the scope of such reservations.

"Municipal Solid Waste" shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C. § 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

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"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O&M" shall mean all activities specified in the O&M Plan approved by EPA, pursuant to this Consent Decree, ROD, the Remedial Design, and to be undertaken by the City and Decker.

"O&M Performance Standards" shall mean the measures of achievement of the O&M Work, as set forth in the ROD, the Remedial Design, and O&M Work Plan, but without regard to the contingent remedy for treatment of groundwater.

"O&M Work" shall mean all activities pursuant to the EPA-approved O&M Plan that the City and Decker are required to perform under this Consent Decree, except those required by Section XXVII (Retention of Records).

"Operation and Maintenance Plan" or "O&M Plan" shall mean the document referenced in Paragraph 18 and approved by EPA, and any amendments thereto, attached as Appendix B, and incorporated herein by reference.

"Owner, Operator, or Lessee of Residential Property" shall mean a person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendants.

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"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the date of entry of this Consent Decree, plus interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"RA Performance Standards" shall mean the measures of achievement of the RA Work, as set forth in the ROD and the Remedial Design, RA Work Plan, and Construction Quality Assurance Plan.

"Plaintiff" shall mean the United States of America.

"RA Work" shall mean all activities pursuant to the EPA approved RA Work Plan that Cooper and Corning are required to perform under this Consent Decree, except those required by Section XXVII (Retention of Records). *RA work shall not include O & M or maintenance of remedy for groundwater* [Mel Moseley to propose language]

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the "Resource Conservation and Recovery Act").

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on March 28, 1995, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix D

"Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by Cooper and Corning to implement the ROD, in accordance with the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

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"Remedial Action Work Plan" or "RA Work Plan" shall mean the document referenced in Paragraph 11 and approved by EPA, and any amendments thereto, attached as Appendix A, and incorporated herein by reference.

"Remedial Design" or "RD" shall mean those activities undertaken by Cooper and Corning to develop the final plans and specifications for the Remedial Action and approved by EPA. The Remedial Design is attached as Appendix E and incorporated herein by reference.

"Residential Property" shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean, collectively, the Settling RA Defendants and the Settling O&M Defendants.

"Settling O&M Defendants" shall mean the City and Decker.

"Settling RA Defendants" shall mean Cooper and Corning.

"Sewage Sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.

"Site" shall mean the Albion-Sheridan Township Landfill Superfund Facility, encompassing approximately 18 acres, located at 29975 East Erie Road in Sheridan Township, Calhoun County, Michigan and depicted generally on the map attached as Appendix F.

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"Small Business" shall mean any business entity that employs no more than 100 individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. 631 et seq.).

"Small Nonprofit Organization" shall mean any organization that does not distribute any part of its income or profit to its members, directors, or officers, employs no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

"State" shall mean the State of Michigan, including, but not limited to, the Michigan Department of Environmental Quality ("MDEQ").

"Supervising O&M Contractor" shall mean any of the principal contractors retained by the Settling O&M Defendants to supervise and direct the implementation of the O&M Work under this Consent Decree.

"Supervising RA Contractor" shall mean any of the principal contractors retained by the Settling RA Defendants to supervise and direct the implementation of the RA Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); [(3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" under the Michigan Natural Resources and Environmental Protection Act ("NREPA"), as amended, MCL 324.20101.

"Work" shall mean, collectively, the RA Work and O&M Work.

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V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health, welfare and the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants, as well as the claims of Settling Defendants against each other, as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. The Settling RA Defendants, Cooper and Corning, shall finance and perform the Remedial Action in accordance with this Consent Decree, the ROD, and the EPA-approved Remedial Design and RA Work Plan, and other plans, standards, specifications, and schedules set forth herein or developed by Cooper and Corning and approved by EPA pursuant to this Consent Decree. The Settling O&M Defendants, City and Decker, shall finance and perform the Operation and Maintenance in accordance with this Consent Decree, the ROD, the O&M Plan, and all plan amendments and other plans, standards, specifications, and schedules set forth herein or developed by the City and Decker and approved by EPA pursuant to this Consent Decree. The City and Decker shall also reimburse the United States for Past and Future Response Costs as provided in this Consent Decree.

b. The obligations of the Settling RA Defendants, Cooper and Corning, to finance and perform the Remedial Action under this Consent Decree are joint and several as to Cooper and Corning only. In the event of the insolvency or other failure of either Cooper or Corning to implement the requirements of this Consent Decree, the remaining Settling RA Defendant ~~and~~ shall complete all such requirements. The obligations of the Settling O&M

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Defendants, City and Decker, to finance and perform the Operation and Maintenance, under this Consent Decree are joint and several as to the City and Decker only. In the event of the insolvency or other failure of either the City or Decker to implement the O&M requirements of this Consent Decree, the remaining ~~Settling O&M Defendant party~~ shall complete all such O&M requirements. The obligations of the City and Decker to pay Past and Future Response Costs under this Consent Decree are several ~~only, and not joint, and several.~~

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the EPA-approved Remedial Design and RA Work Plan and O&M Plan. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the RA Work or O&M Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the RA Work or O&M Work). Where any portion of the RA Work that is not on-site requires a federal or state permit or approval, Settling RA Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such RA-related permits or approvals. Where any portion of the O&M Work that is not on-site requires a federal or state permit or approval, Settling O&M Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such O&M-related permits or approvals.

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b. The Settling Defendants may seek relief under the provisions of Section XX (Force Majeure) of this Consent Decree for any delay in the performance of the RA Work or O&M Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the RA Work or O&M Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any ~~F~~ederal or state statute or regulation.

9. Notice to Successors-in-Title

a. At least 30 days prior to the conveyance to any entity, other than an unincorporated division of Decker or CDC, of any interest in the Adjacent Parcels, including, but not limited to, fee interests, leasehold interests, and mortgage interests, Decker shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section X (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section X (Access and Institutional Controls). At least 15 days prior to such conveyance, Decker shall also give written notice to EPA, the State, the City and, if they have not received EPA's Certification of Completion of RA, the Settling RA Defendants, if the Settling RA Defendants have not yet received EPA's Certification of Completion of RA, of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

*a permit, subsidiary,
to members of a
LL CO., a venture
by joint venture*

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b. In the event of any such conveyance, Decker's obligations under this Consent Decree, including, but not limited to, its obligation to provide access and institutional controls with respect to the Adjacent Parcels, as well as to abide by such institutional controls, pursuant to Section X (Access and Institutional Controls) of this Consent Decree, shall continue to be met by Decker. In no event shall the conveyance release or otherwise affect the liability of Decker to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

as well as to permit S. RA's to remove & use the soil as specified in 9c below,

c. ~~As set forth in the Agreement for Access to Adjacent Parcels attached as Appendix G;~~ Decker and its subsidiary CDC agree to permit Settling RA Defendants to remove and use, free of any charge, fee, or assessment, any reasonably necessary soil fill material from the Adjacent Parcels, provided that Cooper and Corning take the necessary actions to eliminate any unsafe conditions or drainage problems caused by their use of such soil fill material prior to completion of the RA Work. ~~The Settling RA Defendants, Cooper and Corning,~~ shall name Decker and CDC as an additional insureds on any general liability insurance policies written with respect to implementation of the RA on Adjacent Parcels. Additionally, the site security ~~the Settling RA Defendants, Cooper and Corning,~~ install as part of the RA Work shall encompass the Adjacent Parcels. ~~[Mel Moseley to propose language]~~

use mel's language here

VI. PERFORMANCE OF THE RA WORK BY SETTling RA DEFENDANTS

10. Selection of RA Supervising Contractor

a. All aspects of the RA Work to be performed by Cooper and Corning, pursuant to Sections VI (Performance of the RA Work by Settling RA Defendants), VIII (Remedy Review), IX (Quality Assurance, Sampling and Data Analysis), and XVII (Emergency

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Response) of this Consent Decree shall be under the direction and supervision of the RA Supervising Contractor that has been selected by the Settling RA Defendants. Based on information provided by Settling RA Defendants, EPA has issued an authorization to proceed for the RA Supervising Contractor selected. If at any time, Settling RA Defendants propose to change an RA Supervising Contractor, Settling RA Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new RA Supervising Contractor performs, directs, or supervises any RA Work under this Consent Decree.

b. If EPA disapproves a proposed RA Supervising Contractor, EPA will notify the Settling RA Defendants in writing. Settling RA Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling RA Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling RA Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, such Settling RA Defendants may seek relief under the provisions of Section XX (Force Majeure) hereof.

11. RA Work

a. Settling RA Defendants have submitted to EPA, a Remedial Design and a work plan for the performance of the Remedial Action at the Site ("RA Work Plan"), that are

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attached as Appendices E and A, respectively, and are incorporated herein by reference and enforceable under this Consent Decree. EPA has also approved an RA c Construction s Schedule, attached as Appendix H, that is incorporated herein by reference and enforceable under this Consent Decree.

b. The Remedial Action Work Plan provides for construction and implementation of the remedy set forth in the ROD and achievement of the RA Performance Standards, in accordance with this Consent Decree, the ROD, and the design plans and specifications developed in accordance with the Remedial Design as approved by EPA. Settling RA Defendants have also submitted to EPA a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

c. Settling RA Defendants shall implement the RA Work consistent with the Remedial Design and RA Work Plan, attached as Appendices A and E, in accordance with the RA c Construction s Schedule attached as Appendix H. Cooper and Corning shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved RA Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIII (EPA Approval of Plans and Other Submissions). The Settling RA Defendants shall also make such plans, submittals, or other deliverables available to Settling O&M Defendants upon their request.

12. In performing the RA Work, Settling RA Defendants shall meet the RA Performance Standards and shall continue to implement the RA Work until Settling RA Defendants receive a Certification of Completion of RA from EPA. EPA shall notify Settling O&M Defendants at least ¹⁰~~30~~ days in advance of proposed issuance of Certification of Completion of RA, ~~and shall review and consider in good faith any and all comments submitted~~

→ and S. RA's

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~~in response to EPA's notice of proposed issuance of Certification of Completion of RA [Mel Moseley to respond]~~

13. Modification of the RA Work Plan or Related Work Plans.

a. If EPA discovers new information after the date of execution of this Consent Decree by Settling Defendants and, based on such discovery new information, determines that modification to the work specified in the RA Work Plan, and/or in work plans developed pursuant to the RA Work Plan, is necessary to achieve the RA Performance Standards ^{and} to carry out and maintain the effectiveness of the Remedial Action set forth in the ROD, EPA may require that such modification be incorporated in the RA Work Plan and/or such work plans. EPA shall provide Settling O&M Defendants with notice of, ^{reasonable} ~~and reasonable~~ ~~opportunity to comment on~~ any modification to the work specified in the RA Work Plan. ^{should this stay in?} Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the RA selected in the ROD.

b. If Cooper and Corning object to any modification of the RA Work Plan or related work plans determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XXI (Dispute Resolution), Paragraph 77 (record review). The RA Work Plan and/or related work plans shall be modified in accordance with final resolution of the dispute.

c. Cooper and Corning shall implement any work required by any modifications incorporated in the RA Work Plan and/or in work plans developed pursuant to the RA Work Plan in accordance with this Paragraph and not inconsistent with the NCP.

14. For the purposes of Paragraphs 13, and 58 only, the "scope of the RA selected in the ROD" is: (a) removal and off-Site treatment and disposal of drums and underground

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and stop with information being as expected in the final design drawings

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storage tanks containing hazardous wastes; (b) construction of a solid waste landfill cap consisting of a flexible membrane liner; (c) installation of a passive landfill gas collection system; (d) installation of new wells and plugging of abandoned wells; and (e) Site security and institutional controls to limit land and groundwater use on-Site and adjacent property. A contingent remedy of for treatment of groundwater by in situ oxidation provided in the ROD in the event groundwater contaminant levels are not timely and/or sufficiently lowered is not included in the "scope of the RA selected in the ROD." [Mel to propose language]

15. Cooper and Corning acknowledge and agree that nothing in this Consent Decree and the Remedial Action Work Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the RA Work Plan will achieve the RA Performance Standards.

16. Cooper and Corning shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. Cooper and Corning shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Cooper and Corning shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

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b. Cooper and Corning shall provide the information required by Paragraph 16.a as soon as practicable, and before the Waste Material is actually shipped.

VII. PERFORMANCE OF THE O&M WORK BY SETTLING O&M DEFENDANTS**17. Selection of O&M Supervising Contractor.**

a. All aspects of the O&M Work to be performed by the City and Decker, pursuant to Sections VII (Performance of the O&M Work by Settling O&M Defendants), VIII (Remedy Review), IX (Quality Assurance, Sampling and Data Analysis), and XVII (Emergency Response) of this Consent Decree shall be under the direction and supervision of the O&M Supervising Contractor that has been selected by the Settling O&M Defendants and approved by EPA. Within ³⁰~~10~~ days after lodging of this Consent Decree, Settling O&M Defendants shall notify EPA in writing of the name, title and qualifications of any contractor proposed to be their O&M Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time, Settling O&M Defendants propose to change an O&M Supervising Contractor, Settling O&M Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new O&M Supervising Contractor performs, directs, or supervises any O&M Work under this Consent Decree.

b. If EPA disapproves a proposed O&M Supervising Contractor, EPA will notify the Settling O&M Defendants in writing. Settling O&M Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling O&M Defendants

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may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling O&M Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, such Settling O&M Defendants may seek relief under the provisions of Section XX (Force Majeure) hereof.

18. Operation and Maintenance

a. Settling O&M Defendants have submitted to EPA, and EPA has approved, a plan and schedule for the performance of the Operation and Maintenance at the Site ("O&M Plan"), that is attached as Appendix B and is incorporated herein by reference and enforceable under this Consent Decree. The O&M Plan provides for implementation of the Operation and Maintenance consistent with the ROD and achievement of the O&M Performance Standards. ~~Within 10 days of lodging of this Consent Decree By June 1, 1999,~~ Settling O&M Defendants shall submit an addendum to the approved Remedial Action Health and Safety Plan for the Site to EPA for approval. The addendum to the approved Remedial Action Health and Safety Plan for the Site shall outline specific requirements for O&M activities and shall conform to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

~~b. The O&M Plan includes the following: (1) tasks for implementation of the operation and maintenance of the remedial action; (2) a groundwater monitoring plan; and (3) the schedule for implementation of the O&M; and (4) The O&M Plan also shall include a~~

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~~schedule for implementation of all O&M tasks identified in the final design submittal and shall identify the initial formulation of the City's and Decker's Remedial Action O&M Project Team.~~

c b. Settling O&M Defendants shall implement the activities required under the O&M Plan. Settling O&M Defendants shall submit to EPA and MDEQ all plans, submittals, or other deliverables required under the approved O&M Plan in accordance with the approved schedule for review and EPA approval pursuant to Section XIII (EPA Approval of Plans and Other Submissions). Settling O&M Defendants shall also make such plans, submittals or other deliverables available to Settling RA Defendants upon their request. The City and Decker shall commence physical O&M activities at the Site pursuant to the approved schedule in the O&M Plan ~~and Appendix I of this Consent Decree.~~

19. The City and Decker shall continue to implement the O&M for so long as is required under this Consent Decree, including Paragraph 59 (Completion of the O&M Work); ~~and the O&M Plan.~~

20. Modification of the O&M Plan or Related Plans.

a. ~~If EPA discovers new information after the execution of this Consent Decree by Settling Defendants and, based on such discovery new information~~ determines that modification to the work specified in the O&M Plan is necessary to achieve the O&M Performance Standards and to operate and maintain the effectiveness of the RA set forth in the ROD, EPA may require that such modification be incorporated in the O&M Plan. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the O&M selected in the ROD.

b. If the City and Decker object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section

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XXI (Dispute Resolution), Paragraph 77 (record review). The O&M Plan shall be modified in accordance with final resolution of the dispute.

c. The City and Decker shall implement any work required by any modifications incorporated in the O&M Plan in accordance with this Paragraph and not inconsistent with the NCP.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

21. For the purposes of Paragraphs 20 and 59 only, the "scope of the O&M selected in the ROD" is: (a) operation and maintenance of the ^{RA} ~~remedy~~ at the Site; (b) long term monitoring to ^{determine if RA} ~~ensure that the remedy~~ is effectively lowering hazardous substances in the groundwater; and (c) ^{to maintenance of Site Security and} institutional controls to limit land and groundwater use on ~~Site and~~ ^{adjacent parcels pursuant to Q 31.} groundwater on adjacent property. A contingent remedy of in situ oxidation provided in the ROD in the event groundwater contaminant levels are not timely and/or sufficiently lowered is not included in the "scope of the O&M selected in the ROD." [Mike/Phil to propose language]

22. The City and Decker acknowledge and agree that nothing in this Consent Decree and the O&M Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the O&M Plan will achieve the O&M Performance Standards.

23. The City and Decker shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA project coordinator of such shipment of Waste Material. However, the notification requirement shall not

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apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The City and Decker shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; (4) the method of transportation. The City and Decker shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state shall be determined by the City and Decker following the award of the contract for the O&M. The City and Decker shall provide the information required by Paragraph 23.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

Talk to Joe
O.K. to use Decker language

VIII. REMEDY REVIEW

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24. Periodic Review. Settling O&M Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations. *until Cert. of Completion*

25. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

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26. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

27. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Settling RA Defendants have submitted, and EPA has approved, a Quality Assurance Project Plan ("QAPP") that is consistent with the RA Work Plan, the NCP, and applicable EPA guidance documents. Settling O&M Defendants shall use this EPA-approved QAPP for all O&M activities conducted at the Site. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted

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EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Consent Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

28. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

29. Settling Defendants shall submit to EPA four (4) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

30. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

DRAFT - FEBRUARY 2, 1999**X. ACCESS AND INSTITUTIONAL CONTROLS**

31. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. Commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, upon presentation of credentials, with access at all reasonable times to the Site, or any other property owned or controlled by Settling Defendants to which access is required, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States ;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Implementing the Work pursuant to the conditions set forth in Paragraph 101 of this Consent Decree;
- (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXVI (Access to Information);
- (8) Assessing Settling Defendants' compliance with this Consent Decree; and
- (9) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. Commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to

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and Adjacent Parcels consistent with the ROD

this Consent Decree. ~~Such restrictions include, but are not limited to~~, and shall: (i) allowing control of access to the Site and Adjacent Parcels by means of a fence to be installed by Settling RA Defendants as part of the RA Work; (ii) allowing implementation of a maintenance program for the landfill cap including protection of vegetative layer and periodic inspection; (iii) allowing restrictions on future development of the Site; (iv) allowing restrictions on construction of water wells; and (v) ~~provide~~ advisories to all subsequent property owners.

c. Within 30 days of entry of this Consent Decree, execute and record in the Recorder's Office of Calhoun County, State of Michigan, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 31.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 31.b of this Consent Decree, and as provided in Appendix H G of this Consent Decree, to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to the following persons, (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with a certified copy of the original recorded easement showing the clerk's recording stamps.

→ Upon lodging of this Consent Decree,

d. ~~Decker and CDC shall provide Settling RA Defendants and their contractors with access at all reasonable times to the Adjacent Parcels, for the purpose of conducting any activity related to Settling RA Defendants obligations under this Consent Decree until Certification of Completion of RA Work by EPA pursuant to Paragraph 58.b of Section XVI (Certification of Completion).~~

Timely removal of soil & adjacent parcels

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32. ~~a~~ ~~Within 30 days of entry of this Consent Decree,~~ f For those areas of the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, and owned or controlled by persons other than any of the Settling Defendants, Settling RA Defendants shall use best efforts to secure from such persons:

a 1. ~~a~~ An agreement, by February 15, 1999, to provide access thereto for all Settling Defendants, as well as for the United States on behalf of EPA, and the State on behalf of MDEQ, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 2831.a of this Consent Decree; and all activities necessary for construction of a landfill cap on those properties where access is necessary for the construction of such cap;

b 2. ~~within thirty (30) days of entry of this Consent Decree,~~ a An agreement, by June 1, 1999, enforceable by the Settling Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 2831.b of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree to provide access thereto for all Settling Defendants, as well as for the United States on behalf of EPA, and the State on behalf of MDEQ, as well as their representatives (including contractors), for the purpose of conducting any and all activities necessary for maintaining, inspecting or sampling any groundwater monitoring well and gas monitoring probe on those properties where access is necessary for the maintenance, inspection or sampling of any groundwater monitoring well and gas monitoring probe; and

under (90)
c 3. ~~within thirty (30) days of entry of this Consent Decree,~~ the execution and recordation in the Recorder's Office of Calhoun County, State of Michigan, of an easement,

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running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 31.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 31.b of this Consent Decree, and as provided in Appendix G, or to ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, and (iii) the Settling Defendants and their representatives. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with a certified copy of the original recorded easement showing the clerk's recording stamps.

~~b. For those areas of the Site, or any other property where access is needed for the sampling of residential wells, and owned or controlled by persons other than any Settling Defendants, Settling O&M Defendants shall use best efforts to secure from such persons an agreement to allow the sampling of such residential wells.~~ *Consistent with the O&M Plan.*

33. For purposes of Paragraph 32 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. If any access or land/water use restriction agreements required by Paragraphs 31.a, 31.^cb, 32.a or 32.b of this Consent Decree are not obtained upon lodging of this Consent Decree, or any access easements or restrictive easements required by Paragraphs 31.c or 32.c of this Consent Decree are not submitted to EPA within 30 days of entry of this Consent Decree, *SPRAs or SO&M AS, as the case may be,* Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraphs 31 or 32 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in

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obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States within 30 days of receipt of a demand for payment by EPA, for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

34. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

35. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. RA REPORTING REQUIREMENTS

36. In addition to any other requirement of this Consent Decree, Settling RA Defendants shall submit to EPA and the State two (2) copies of written monthly RA progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling RA Defendants or their contractors or agents in the previous month; (c) identify all RA Work Plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous

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month; (d) describe all actions, including, but not limited to, data collection and implementation of RA Work Plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling RA Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling RA Defendants shall submit these progress reports to EPA, the Settling O&M Defendants, and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling RA Defendants pursuant to Paragraph 58.b of Section XVI (Certification of Completion). If requested by EPA, Settling RA Defendants shall also provide briefings for EPA to discuss the progress of the Work.

37. The Settling RA Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of RA Work Plans, no later than seven days prior to the performance of the activity.

38. Upon the occurrence of any event during performance of the RA Work that Settling RA Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling RA Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the

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EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

39. Within 20 days of the onset of such an event, Settling RA Defendants shall furnish to Plaintiff a written report, signed by the appropriate Settling RA Defendants' RA Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling RA Defendants shall submit a report setting forth all actions taken in response thereto.

40. Settling RA Defendants shall submit two (2) copies of all plans, reports, and data required by the RA Work Plan, or any other approved plan amendments to EPA in accordance with the schedules set forth in such plans. Settling RA Defendants shall simultaneously submit two (2) copies of all such plans, reports and data to the State. All reports and other documents submitted by Settling RA Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling RA Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling RA Defendants.

XII. O&M REPORTING REQUIREMENTS

41. In addition to any other requirement of this Consent Decree, Settling O&M Defendants shall submit to EPA and the State, two (2) copies of written quarterly O&M progress reports consistent with the requirements of the approved O&M Plan, that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling O&M Defendants or their contractors or agents in the

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~~previous quarter; (c) identify all O&M Plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous quarter; (d) describe all actions, including, but not limited to, data collection and implementation of O&M Plans, which are scheduled for the next six months; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling O&M Defendants have proposed to EPA or that have been approved by EPA; and (g) describe any activities undertaken in support of the Community Relations Plan during the previous six months and those to be undertaken in the next six months. Settling O&M Defendants shall submit these progress reports to EPA, the Settling RA Defendants upon their request, and the State by the tenth day of every three months following the lodging of this ~~Consent Decree~~, until EPA notifies the Settling O&M Defendants pursuant to Paragraph 59.b of Section XVI (Certification of Completion). If requested by EPA, Settling O&M Defendants shall also provide briefings for EPA to discuss the progress of the Work.~~

check this

42. The Settling O&M Defendants shall notify EPA of any change in the schedule described in the ~~quarterly~~ progress report for the performance of any activity, including, but not limited to, data collection and implementation of O&M Plans, no later than seven days prior to the performance of the activity.

43. Upon the occurrence of any event during performance of the O&M Work that Settling O&M Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling O&M Defendants shall, within 24 hours of the onset of such event, orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the

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EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

44. Within 20 days of the onset of such an event, Settling O&M Defendants shall furnish to Plaintiff a written report, signed by the appropriate Settling O&M Defendants' O&M Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling O&M Defendants shall submit a report setting forth all actions taken in response thereto.

45. Settling O&M Defendants shall submit two (2) copies of all plans, reports, and data required by the O&M Plan, or any other approved plan amendments to EPA in accordance with the schedules set forth in such plans. Settling O&M Defendants shall simultaneously submit two (2) copies of all such plans, reports and data to the ~~State~~ MDEQ. All reports and other documents submitted by Settling O&M Defendants to EPA (other than the ~~Settling O&M Defendants'~~ progress reports referred to above) which purport to document Settling O&M Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling O&M Defendants.

XIII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

46. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However,

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EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within fourteen (14) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

47. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 46(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 46(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXII (Stipulated Penalties).

48. a. Upon receipt of a notice of disapproval pursuant to Paragraph 46(d), Settling Defendants shall, within fourteen (14) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXII (Stipulated Penalties), shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 49 and 50.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 46(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient

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portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXII (Stipulated Penalties).

49. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XXI (Dispute Resolution).

50. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXI (Dispute Resolution) and Section XXII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXII (Stipulated Penalties).

51. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

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XIV. PROJECT COORDINATORS

52. Within 20 days of lodging this Consent Decree, Settling RA Defendants, Settling O&M Defendants and EPA shall notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor shall be given to the ~~other Parties~~ ^{other Parties} at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinators shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. No Settling Defendants' Project Coordinator shall be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

53. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

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XV. ASSURANCE OF ABILITY TO COMPLETE WORK

54. (a) Not less than 30 days before commencement of the RA Work and the O&M Work, as the case may be, Settling RA Defendants shall establish and maintain financial security in the amount of \$2.6 million, and Settling O&M Defendants shall establish and maintain financial security in the amount of \$ 0.589 million, respectively, in one or more of the following forms:

- a-1. surety bond guaranteeing performance of the Work;
- b-2. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c-3. A trust fund;
- d-4. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the appropriate Settling Defendants; or
- e-5. A demonstration that one or more of the appropriate Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f); or
- 6. Any other method approved by EPA in its discretion that may be appropriate for this action. Any conditions imposed by EPA in writing with regard to such method shall be considered to be incorporated in this Consent Decree.

(b) If EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, EPA may require Settling RA Defendants, or Settling O&M Defendants as the case may be, within sixty (60) days of receipt of notice of EPA's determination, to establish and maintain financial security in the amount of the cost of the remaining Work, as determined by EPA, in one or more of the following forms:

- 1. surety bond guaranteeing performance of the Work;
- 2. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- 3. A trust fund;

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4. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the appropriate Settling Defendants, or

5. A demonstration that one or more of the appropriate Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

55. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 54.⁴ of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 54.⁴ or 54.⁵, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 54 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

56. If Settling RA Defendants and Settling O&M Defendants can show that the estimated cost to complete the remaining Work has diminished below the amounts set forth, respectively, in Paragraph 54 above after entry of this Consent Decree, such Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Such Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a

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dispute, any such Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

57. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XVI. CERTIFICATION OF COMPLETION

58. Completion of the RA Work

a. Within 90 days after Settling RA Defendants conclude that the RA Work has been fully performed and the RA Performance Standards have been attained, Settling RA Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling RA Defendants, Settling O&M Defendants and EPA. If, after the pre-certification inspection, the Settling RA Defendants still believe that the RA Work has been fully performed and the RA Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State and Settling O&M Defendants, pursuant to Section XIII (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Settling RA Defendants' Project Coordinator shall state that the RA Work has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling RA Defendant or the Settling RA Defendants' Project Coordinator:

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To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

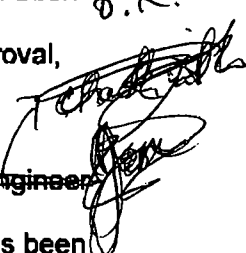
If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the RA Work or any portion thereof has not been completed in accordance with this Consent Decree or that the RA Performance Standards have not been achieved, EPA will notify Settling RA Defendants in writing of the activities that must be undertaken by Settling RA Defendants pursuant to this Consent Decree to complete the RA Work and achieve the RA Performance Standards. Provided, however, that EPA may only require Settling RA Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the RA selected in the ROD," as that term is defined in Paragraph 14. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RA Work Plan or require the Settling RA Defendants to submit a schedule to EPA for approval pursuant to Section XIII (EPA Approval of Plans and Other Submissions). Settling RA Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State and Settling O&M Defendants, that the RA Work has been performed in accordance with this Consent Decree and that the RA Performance Standards have been achieved, EPA will so certify in writing to Settling RA Defendants. This certification shall constitute the Certification of

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Completion of the RA Work for purposes of this Consent Decree, including, but not limited to, Section XXIII (Covenants Not to Sue by Plaintiff).

59. Completion of the O&M Work

a. Within 90 days after Settling O&M Defendants conclude that the O&M Work has been fully performed, Settling O&M Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling O&M Defendants and EPA. If, after the pre-certification inspection, the Settling O&M Defendants still believe that the O&M Work has been fully performed, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XIII (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, ~~a registered professional engineer~~ ^{D.K.}  and the Settling O&M Defendants' Project Coordinator shall state that the O&M Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling O&M Defendant or the Settling O&M Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the O&M Work or any portion thereof has not been completed in accordance with this Consent Decree, EPA will notify Settling O&M Defendants in writing of the activities that must be undertaken by Settling O&M Defendants pursuant to this Consent Decree to complete the O&M Work. Provided, however, that EPA may only require Settling O&M Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with

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the "scope of the O&M selected in the ROD," as that term is defined in Paragraph 21. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the O&M Plan or require the Settling O&M Defendants to submit a schedule to EPA for approval pursuant to Section XIII (EPA Approval of Plans and Other Submissions). Settling O&M Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the O&M Work has been performed in accordance with this Consent Decree, EPA will so certify in writing to Settling O&M Defendants. This certification shall constitute the Certification of Completion of the O&M Work for purposes of this Consent Decree, *See as top of p. 45*

XVII. EMERGENCY RESPONSE

60. In the event of any action or occurrence during the performance of the RA Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling RA Defendants shall, subject to Paragraph 62, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if EPA's Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling RA Defendants shall notify the EPA Emergency Response Unit, Region 5. Settling RA Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents

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developed pursuant to the RA Work Plan. In the event that Settling RA Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling RA Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP within 30 days of receipt of demand for payment by EPA.

61. In the event of any action or occurrence during the performance of the O&M Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling O&M Defendants shall, subject to Paragraph 62, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Project Coordinator, or, if EPA's Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling O&M Defendants shall notify the EPA Emergency Response Unit, Region 5. Settling O&M Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the O&M Plan. In the event that Settling O&M Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling O&M Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP within 30 days of receipt of demand for payment by EPA.

62. Nothing in the preceding Paragraphs or in this Consent Decree shall be deemed to limit any authority of the United States: a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to

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prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXIII (Covenants Not to Sue by Plaintiff).

XVIII. REIMBURSEMENT OF RESPONSE COSTS

63. The City shall pay to the EPA Hazardous Substance Superfund the amount of \$400,000, in five (5) equal annual installments, commencing on the first anniversary of the entry of this Consent Decree in reimbursement of, and in full satisfaction of the City's responsibility for Past Response Costs. Interest on the unpaid balance shall begin to accrue from the date of entry of this Consent Decree. Each annual payment shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID # 05-AN, and DOJ case number 90-11-2-1109. Payments shall be made in accordance with instructions provided to the City by the Financial Litigation Unit of the United States Attorney's Office for the ^{Western} District of Michigan following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. The City shall send notice that such payment has been made to the United States as specified in Section XXVIII (Notices and Submissions) and to:

Chief, Superfund Accounting
U.S. EPA (Mail Code: MF-10J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Multi-Media Enforcement Branch I
Office of Regional Counsel
U.S. EPA
77 West Jackson Boulevard
Chicago, Illinois 60604

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64. Within thirty (30) days of entry of this Consent Decree, Decker shall pay to the EPA Hazardous Substance Superfund; the amount of \$250,000, in reimbursement of Past Response Costs, by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID # 05-AN, and DOJ case number 90-11-2-1109. The payment shall be made in accordance with instructions provided to Decker by the Financial Litigation Unit of the United States Attorney's Office for the *Western* District of Michigan following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Decker shall send notice that such payment has been made to the United States as specified in Section XXVIII (Notices and Submissions) and to:

Chief, Superfund Accounting
U.S. EPA (Mail Code: MF-10J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Chief, Multi-Media Enforcement Branch I
Office of Regional Counsel
U.S. EPA
77 West Jackson Boulevard
Chicago, Illinois 60604

65. Within 60 days of entry of this Consent Decree, the City and Decker shall each pay to the EPA Hazardous Substance Superfund the amount of \$ ~~100,000~~ 50,000 for Future Response Costs; *8 months of entry* within ~~six (6) months thereafter~~, the City and Decker shall each pay to the EPA Hazardous Substance Superfund, an additional amount of \$50,000 for Future Response Costs. The entire amount of \$200,000 shall be deposited in the Albion-Sheridan Township Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to reimburse EPA for future ~~Response Costs~~ *Response Costs* at the Site. This amount shall be in full satisfaction of the Settling Defendants' responsibility for Future Response Costs. The

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City and Decker shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund--Albion-Sheridan Township Landfill Superfund Site Special Account" and referencing the EPA Region and Site/Spill ID # 05-AN, and DOJ case number 90-11-2-1109, and the name and address of the party making payment. The City and Decker shall send their checks to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673 and shall send copies of the checks to the United States as specified in Section XXVIII (Notices and Submissions) and Paragraph 63 of this Consent Decree. *Decker Ca EFT overnight costs?*
In the alternative, the City and Decker can make these payment via electronic funds transfer to EPA.

66. In the event that the payments required by Paragraph 65 are not made when due, ~~within 60 days of the effective date entry of this Consent Decree, Settling O&M~~ Defendants the City or Decker, as the case may be, shall pay interest on the unpaid balance from the due date. The interest shall accrue through the date of the City's or Decker's payments, ~~as the case may be~~. Payments of interest made under this Section shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of the City's or Decker's failure to make timely payments under this Section.

XIX. INDEMNIFICATION AND INSURANCE

67. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree,

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including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 67.a, ~~shall give Settling Defendants a reasonable opportunity to defend such claim,~~ and shall consult with Settling Defendants prior to settling such claim.

68. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance

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of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

69. No later than 15 days before commencing any on-site RA Work, Settling RA Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the RA Work pursuant to Paragraph 58.b of Section XVI (Certification of Completion) comprehensive general liability insurance with limits of \$1 million, combined single limit, and automobile liability insurance with limits of \$1 million, combined single limit, naming the United States as an additional insured. In addition, no later than 15 days before commencing any on-site O&M Work, Settling O&M Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the O&M Work pursuant to Paragraph 59.b of Section XVI (Certification of Completion) comprehensive general liability insurance with limits of \$1 million, combined single limit, and automobile liability insurance with limits of \$1 million, combined single limit, naming the United States as an additional insured. For the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

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XX. FORCE MAJEURE

70. a. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling RA Defendants or Settling O&M Defendants, as the case may be, of any entity controlled by such Settling Defendants, or of such Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite such Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible.

b. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the RA Performance Standards or the O&M Performance Standards, as the case may be. "Force Majeure" does not include any failure by Decker or CDC to perform any obligation under this Consent Decree due to Decker's or CDC's conveyance of the Adjacent Parcels, or any portion thereof, to any unincorporated division of Decker or CDC. "Force Majeure" includes a failure by the Settling RA Defendants or their contractors to perform RA Work in a good and workmanlike manner, as determined by recognized engineering standards and practices, consistent with the ROD, RA Work Plan, and other requirements of this Consent Decree, provided that such failure delays or prevents the performance of any obligation under this Consent Decree despite the Settling O&M Defendants' best efforts to fulfill the obligation.

c. To the extent that a failure by the Settling RA Defendants or their contractors to perform RA Work in a good and workmanlike manner is determined to be a force majeure event under this Consent Decree, the Settling RA Defendants shall be responsible for

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restoring the RA Work to meet a good and workmanlike standard, as determined by recognized engineering standards and practices, consistent with the ROD, RA Work Plan, and other requirements of this Consent Decree. The Settling RA Defendants' responsibility for restoring the RA Work to meet a good and workmanlike standard under this Paragraph shall continue notwithstanding any other provision of this Consent Decree.

71. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling RA Defendants or Settling O&M Defendants, as the case may be, shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within two (2) days of when Settling Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling RA Defendants or Settling O&M Defendants, as the case may be, shall be deemed to know of any circumstance of which such Settling RA Defendants or Settling O&M Defendants, any entity controlled by such Settling

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RA Defendants or Settling O&M Defendants, or such Settling RA Defendants' or Settling O&M Defendants' contractors knew or should have known.

72. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

73. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 70 and 71, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

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XXI. DISPUTE RESOLUTION

74. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

75. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

76. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 77 or Paragraph 78.

b. Within thirty (30) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting

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documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 77 or 78. Within ~~ten (10)~~ **twenty (20)** days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 77 or 78, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 77 and 78.

77. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ~~ROD's provisions~~. *→ RA or O&M selected in the*

a. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental Statements of Position by the parties to the dispute.

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b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 77.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 77c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 77.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 77.a.

78. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 76, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the

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decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph Q of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

79. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA agrees or the Court orders otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 89. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties).

XXII. STIPULATED PENALTIES

80. Settling RA Defendants or Settling O&M Defendants, as the case may be, shall be liable for stipulated penalties in the amounts set forth in Paragraphs 81.a and 82 to the United States for their failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure). "Compliance" by Settling RA Defendants or Settling O&M Defendants, as the case may be, shall include completion of the applicable activities under this Consent Decree or any work plan or other plan approved under

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this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the RA Work Plan and O&M Plan, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

81. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1000	1st through 14th day
\$ 2000	15th through 30th day
\$ 4000	31st day and beyond

b. Compliance Milestones.

1. Failure to adequately or timely complete the following submissions/activities ~~set forth in the RA Work Plan~~ shall subject Settling RA Defendants to the stipulated penalties established in Subparagraph a.:

~~Record access and deed restrictions on all property as described in the ROD within 30 days of entry of this Consent Decree.~~

~~Submit to EPA signed access agreements or notification in writing pursuant to Paragraph 33 of this Consent Decree, for all property where access is needed by February 15, 1999.~~

~~Submit to EPA signed access agreements or notification in writing pursuant to Paragraph 33 of this Consent Decree, for all property where access is needed to monitoring wells and gas probes by July 15, 1999.~~

~~Complete all RA Work tasks with Major Milestones by the dates required in the RA Settling Defendant Construction Schedule in Appendix F.H.~~

~~Provide seventy-two (72) hours one full Working Day notice to EPA's Project Coordinator of any change in scheduled field activities.~~

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(2) Failure to adequately or timely complete the following submissions/ activities set forth in the O&M Plan and this Consent Decree shall subject Settling O&M Defendants to the stipulated penalties established in Subparagraph a.:

~~Initiate O&M as provided in the O&M Plan schedule.~~

Initiate quarterly groundwater ^{and drinking water} monitoring consistent with the schedule in Appendix I and the O&M Plan.

Complete quarterly groundwater and drinking water monitoring as provided in the O&M Plan schedule.

~~Initiate annual groundwater monitoring as provided in the O&M Plan schedule.~~

~~Complete annual groundwater monitoring as provided in the O&M Plan schedule.~~

~~Initiate five-year review groundwater monitoring as provided in the O&M Plan schedule.~~

~~Complete five-year review groundwater monitoring as provided in the O&M Plan schedule.~~

~~Complete O&M as provided in the O&M Plan schedule.~~

Payment of any Past Response Costs or Future Response Costs installment payment by the City as required by this Consent Decree (except that Decker shall not be assessed any penalty based on the City's failure to make any such installment payment).

Payment of the any Past Response Costs ~~or Future Response Costs~~ installment payment by Decker as required by this Consent Decree (except that the City shall not be assessed any penalty based on Decker's failure to make any such payment).

~~Payment of the future Response Costs payment by the City and Decker as required by this Consent Decree.~~

Implementation of the access and institutional controls by Decker on the Adjacent Parcels, as provided in Paragraph 31 of this Consent Decree *(except that the City shall not be assessed any penalty based on Decker's failure to make any such payment).*

82. a. The following stipulated penalties shall accrue per violation per day for

failure of Settling RA Defendants or Settling O&M Defendants to submit timely or adequate

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reports or other written documents pursuant to the RA Work Plan and O&M Plan, respectively, and this Consent Decree and for any noncompliance identified in Subparagraph b.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

b. Compliance Milestones

(1) Failure to adequately or timely complete the following submissions/activities set forth in the RA Work Plan shall subject Settling RA Defendants to the stipulated penalties established in Subparagraph a:

Record access and deed restrictions on all property, excluding the Adjacent Parcels, as described in the ROD within 90 ninety (90) days of entry of this Consent Decree.

(2) Failure to adequately or timely complete the following submissions/activities set forth in the O&M Plan and this Consent Decree shall subject Settling O&M Defendants to the stipulated penalties established in Subparagraph a:

Complete quarterly groundwater and drinking water monitoring as provided in the O&M Plan schedule.

Initiate annual groundwater monitoring as provided in the O&M Plan schedule.

Complete annual groundwater monitoring as provided in the O&M Plan schedule.

Initiate five-year review groundwater monitoring as provided in the O&M Plan schedule.

Complete five-year review groundwater monitoring as provided in the O&M Plan schedule.

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83. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIII (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 77.b or 78.a of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XXI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

84. Following EPA's determination that Settling RA Defendants have failed to comply with an RA requirement of this Consent Decree, EPA may give Settling RA Defendants written notification of the same and describe the noncompliance. EPA may send the Settling RA Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling RA Defendants of a violation.

85. Following EPA's determination that Settling O&M Defendants have failed to comply with an O&M requirement of this Consent Decree, EPA may give Settling O&M Defendants written notification of the same and describe the noncompliance. EPA may send

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the Settling O&M Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph 83 regardless of whether EPA has notified the Settling O&M Defendants of a violation.

86. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XXI (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the U.S. Environmental Protection Agency, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 05-AN, the DOJ Case Number 90-11-2-1109, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVIII (Notices and Submissions), and to the addressees in Paragraph 63 of this Consent Decree.

87. The payment of penalties relating to the RA Work shall not alter in any way Settling RA Defendants' obligation to complete the performance of the RA Work required under this Consent Decree.

88. The payment of penalties relating to the O&M Work shall not alter in any way Settling O&M Defendants' obligation to complete the performance of the O&M Work required under this Consent Decree.

89. Penalties shall continue to accrue as provided in Paragraph 83 during any dispute resolution period, but need not be paid until the following:

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a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

90. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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91. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXIII. COVENANTS NOT TO SUE BY PLAINTIFF

92. In consideration of the actions that will be performed and the payments that will be made by the Settling O&M Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 93, 94, and 100 of this Section, the United States covenants not to sue or to take administrative action against Settling O&M Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future ^{O&M} ~~present~~ liability of the City Settling O&M Defendants, these covenants not to sue shall take effect upon receipt by EPA of the initial payments required by Paragraph 65 of Section XVIII (Reimbursement of Response Costs); the receipt by EPA of the payments required by Paragraphs 54 and 55 of Section XVI (Reimbursement of Response Costs). Except with respect to future liability of Decker, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 55 of Section XVI (Reimbursement of Response Costs): With respect to future ^{O&M} ~~liability~~ of the Settling O&M Defendants, these covenants not to sue shall take effect upon Certification of Completion of O&M Work by EPA pursuant to Paragraph 59.b of Section XVI (Certification of Completion). These ~~continued effectiveness of these~~ covenants not to sue are ~~is~~ conditioned upon the satisfactory performance by Settling O&M Defendants of their obligations under this Consent Decree, including but not limited to, reimbursement of Response Costs pursuant to Section XVIII (Reimbursement of Response Costs). These covenants not to sue extend only to the Settling O&M Defendants and do not extend to any other person, except that these covenants not to sue (and reservations of rights thereto) shall also apply to Settling O&M Defendants'

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officers, public officials, directors, and employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of the Settling O&M Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling O&M Defendant.

93. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling O&M Defendants to perform further response actions relating to the Site, or to reimburse the United States for additional costs of response, if, prior to Certification of Completion of the O&M Work:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Operation and Maintenance is not protective of human health or the environment.

94. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling O&M Defendants to perform further response actions relating to the Site or to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the O&M Work:

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- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Operation and Maintenance is not protective of human health or the environment.

95. For purposes of Paragraph 93, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree and set forth in the Record of Decision for the Site and or in the Site *environmental conditions at* public EPA files regarding the Site. For purposes of Paragraph 94, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the O&M Work and set forth in the Record of Decision, the ~~Active Site File~~, or in the public EPA files regarding the Site, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the O&M Work.

96. In consideration of the actions that will be performed by the Settling RA Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 97, 98, and 100 of this Section, the United States covenants not to sue or to take administrative action against Settling RA Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except ~~with~~ With respect to present future liability of the Settling RA Defendants, these covenants not to sue shall take effect upon entry of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the RA Work by EPA pursuant to Paragraph 58.b of Section XVI (Certification of Completion). These ~~continued effectiveness of~~

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except
these covenants not to sue are conditioned upon the satisfactory performance by Settling RA Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling RA Defendants and do not extend to any other person. These covenants not to sue (and reservations of rights thereto) shall also apply to Settling RA Defendants' officers, directors, and employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of the Settling RA Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling RA Defendant.

97. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling RA Defendants to perform further response actions relating to the Site, or to reimburse the United States for additional costs of response, if, prior to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

98. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is

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without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling RA Defendants to perform further response actions relating to the Site, or to reimburse the United States for additional costs of response, if, subsequent to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

99. For purposes of Paragraph 97, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree and set forth in the Record of Decision for the Site and the ~~Active Site File~~ ~~public EPA files~~ regarding the Site. For purposes of Paragraph 98, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the RA Work and set forth in the Record of Decision, the ~~Site File~~, ~~public EPA files~~ regarding the Site, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the RA Work.

100. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraphs 8492 and 8596. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

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- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise authorized by EPA;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- g. liability for implementation of the contingent remedy for groundwater treatment provided for in the ROD.

101. Work Takeover. In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution), Paragraph 74, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States not inconsistent with the NCP in performing the Work pursuant to this

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Paragraph shall be reimbursed to EPA by the respective Settling Defendants within 30 days of receipt of a demand for payment by EPA.

102. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIV. COVENANTS BY SETTLING DEFENDANTS

103. Covenant Not to Sue. Subject to the reservations in Paragraph 104, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, and Past and Future Response Costs as defined herein, or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States, under CERCLA Sections 107 or 113 related to the Site;

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities; or

d. any claims for costs, fees or expenses incurred in this action, including claims under 28 U.S.C. § 2412 (Equal Access to Justice Act), as amended.

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104. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA;

105. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

106. Settling Defendants ~~agree to waive all claims or causes of action (except claims to enforce obligations under this Consent Decree) that they may have for all matters~~ covenant not to sue each other and agree to waive all claims and causes of action against each other (except for claims to enforce obligations under this Consent Decree), for all Matters Addressed herein relating to the Site, including dismissal of the Third-Party Complaints, Counterclaims and Cross-Claims filed herein for contribution, and further agree to waive all claims and causes of action for Matters Addressed herein relating to the Site, including for contribution, against each other and the following persons:

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a. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of only Municipal Solid Waste or Sewage Sludge owned by such person, and (iii) who is a Small Business, a Small Non-profit Organization, or the Owner, Operator, or Lessee of Residential Property; and

b. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of 55 gallons or less of liquid materials containing hazardous substances, or 100 pounds or less of solid materials containing hazardous substances, except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site.

XXV. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

107. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto, except as provided in Paragraph 106.

108. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to

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protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for Matters Addressed in this Consent Decree. This contribution protection shall also apply to the Settling Defendants' officers, public officials, directors, and employees, successors, and assigns, but only to the extent that any alleged liability of the officer, director, employee, successor or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of the Settling Defendant, and not to the extent that any alleged liability arose independently of the alleged liability of the Settling Defendant.

109. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than forty-five (45) days prior to the initiation of such suit or claim.

110. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within fifteen (15) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within fifteen (15) days of service or receipt of any Motion for Summary Judgment and within fifteen (15) days of receipt of any order from a court setting a case for trial.

111. (a) In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case;

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provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIII (Covenants Not to Sue by Plaintiff).

(b) In any subsequent judicial proceeding initiated by any Settling Defendant for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the defenses or claims raised by the Settling Defendants in the subsequent proceeding were or should have been brought in the instant case, provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIV (Covenants by Settling Defendants).

→ Paragraph 106 of

XXVI. ACCESS TO INFORMATION

112. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, upon request to the ~~party~~ ^{person} identified in Section XXVIII (Notices and Submissions), for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

113. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.

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§ 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

114. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing environmental conditions at or around the Site.

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XXVII. RETENTION OF RECORDS

115. a. Until 10 years after the Settling RA Defendants' receipt of EPA's notification pursuant to Paragraph 58.b of Section XVI (Certification of Completion), each Settling RA Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling RA Defendants' receipt of EPA's notification pursuant to Paragraph 58.b of Section XVI (Certification of Completion), Settling RA Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

b. Until 10 years after the Settling O&M Defendants' receipt of EPA's notification pursuant to Paragraph 59.b of Section XVI (Certification of Completion), each Settling O&M Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling O&M Defendants' receipt of EPA's notification pursuant to Paragraph 59.b of Section XVI (Certification of Completion), Settling O&M Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

116. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents; and, upon request by the United States, Settling Defendants shall deliver any such

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records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

117. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVIII. NOTICES AND SUBMISSIONS

118. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the

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Consent Decree with respect to the United States, EPA, and the Settling Defendants,
respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1109

and

Director, Superfund Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to EPA:

Jon Peterson
EPA Project Coordinator
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to the Settling RA Defendants:

[Name]
Settling Defendants' Project Coordinator
[Address] [Mel Moseley to supply]

As to the Settling O&M Defendants:

[Name]
Settling Defendants' Project Coordinator
[Address]

Mr. Mark D. Baker, P.E.
Senior Engineer
SECOR International Incorporated
2205 Jolly Road
Suite A
Okemos, MI 48864-3983
Phone: 517/349-9499
Fax: 517/349-6863

and

→ fax today

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Mr. Leroy Schmidt
Director of Public Works, City Engineer
City of Albion
112 West Cass Street
Albion, MI 49224
Phone: 517/629-5535
Fax: 517/629-2238

with copies to:

Mr. Charles M. Denton
Varnum, Riddering, Schmidt & Howlett, L.L.P.
Bridgewater Place
P.O. Box 352
Grand Rapids, MI 49501-0352
Phone: 616/336-6538
Fax: 616/336-7000

and

Mr. Philip Mollanen
Bullen, Mollanen, Klaasen & Swan, P.C.
402 S. Brown Street
Jackson, MI 49203-1426
Phone: 517/788-8500
Fax: 517/788-8507

XXIX. EFFECTIVE DATE

119. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXX. RETENTION OF JURISDICTION

120. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or

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enforce compliance with its terms, or to resolve disputes in accordance with Section XXI (Dispute Resolution) hereof.

XXXI. APPENDICES

121. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the RA Work Plan.

"Appendix B" is the O&M Plan.

"Appendix C" is the Legal Description of the Adjacent Parcels.

← need to obtain this.

"Appendix D" is the ROD.

"Appendix E" is the Remedial Design

"Appendix F" is the description and/or map of the Site

"Appendix G" is the Draft Easement.

~~"Appendix H" is the Agreement for Access to the Adjacent Parcels~~

"Appendix H" is the EPA-approved RA Construction Schedule.

XXXII. COMMUNITY RELATIONS

122. Settling Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

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XXXIII. MODIFICATION

123. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

Just notice to O&M DS

124. a. Except as provided in Paragraph 13 ("Modification of the RA Work Plan or related Work Plans"), no material modifications shall be made to the RA Work Plan without written notification to and written approval of the United States, Settling RA Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State and ~~Settling O&M Defendants~~ with a reasonable opportunity to review and comment on the proposed modification. Modifications to the RA Work Plan that do not materially alter that document may be made by written agreement between EPA, after providing the State and ~~Settling O&M Defendants~~ with a reasonable opportunity to review and comment on the proposed modification, and the Settling RA Defendants.

Don't need to be done.

b. Except as provided in Paragraph 20 ("Modification of the O&M Plan or Related Plans"), no material modifications shall be made to the O&M Plan without written notification to and written approval of the United States, ~~and Settling O&M Defendants, and or~~ by Order of the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the O&M Plan that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling O&M Defendants.

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125. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

126. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

127. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXV. SIGNATORIES/SERVICE

128. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

129. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United

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States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

130. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXVI. FINAL JUDGMENT

131. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment Consent Decree as a final judgment under Fed. R. Civ. P. 54.

SO ORDERED, ADJUDGED AND DECREED THIS __ DAY OF ____, 1999.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Albion, Michigan et al., Case No. 1:97-CV-1037 (W.D. Mich.), relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Date

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date

Francis J. Biros
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20530-7611

Date

W. Francesca Ferguson
Assistant United States Attorney
Western District of Michigan
U.S. Department of Justice
P.O. Box 208
Grand Rapids, Michigan 49501-25110

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Albion, Michigan et al., Case No. 1:97-CV-1037 (W.D. Mich.), relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR THE UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY:

Date

~~David A. Ulrich~~ *William E. Muro*
~~Acting Regional Administrator, Region 5~~
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

Director, Superfund Division

Date

Connie Puchalski
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Albion, Michigan et al., Case No. 1:97-CV-1037 (W.D. Mich.), relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR _____ COMPANY, INC.

Date

Signature: _____

Name (print): _____

Title: _____

Address: _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____

Title: _____

Address: _____

Ph. Number: _____